

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री राजपाल यादव, उपाध्यक्ष एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. RAJPAL YADAV, VP & SHRI. KRINWANT SAHAY, AM

आयकर अपील सं. / ITA No. 880/Chd/ 2024
निर्धारण वर्ष / Assessment Year : 2021-22

Homelife Buildcon Private Limited Sunview Enclave, Ayali Kalan, Ludhiana, Punjab-142027	बनाम	The DCIT Central Circle-1 Ludhiana, Punjab
स्थायी लेखा सं. / PAN NO: AABCH5690M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA No. 1036/Chd/ 2024
निर्धारण वर्ष / Assessment Year : 2021-22

The DCIT Central Circle-1 Ludhiana, Punjab	बनाम	Homelife Buildcon Private Limited Sunview Enclave, Ayali Kalan, Ludhiana, Punjab-142027
स्थायी लेखा सं. / PAN NO: AABCH5690M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and
Shri Rohit Kapoor, C.A
राजस्व की ओर से/ Revenue by : Shri Manav Bansal, CIT, DR

सुनवाई की तारीख/Date of Hearing : 21/05/2025
उद्घोषणा की तारीख/Date of Pronouncement : 17/07/2025

आदेश/Order

PER KRINWANT SAHAY, AM:

This is an appeal filed the Assessee and cross appeal by the Department against the order of the Ld. CIT(A)-5, Ludhiana dt. 19/07/2024 pertaining to Assessment Year 2021-22.

2. Since both the above appeals were heard together, therefore they are being disposed of by this consolidated order for the sake of convenience and brevity.

3. The Assessee in its appeal in ITA No. 880/Chd/2024 has raised following grounds:

“1. That the Ld. CIT(A) has erred in sustaining addition of Rs. 5,55,00,000/- on account of certain alleged incriminating evidence found from the possession of one Sh. Ravi Kapoor, who is not even an employee of the assessee and is third party, as per para (xxx), page 93 of the order of CIT(A).

2. That the Ld. CIT(A) has erred in placing reliance on electronic data, which is an inadmissible evidence and is contrary to the CBDT Digital Evidence Investigation Manual, which governs procedure for collecting digital evidence.

3. a). That the Ld. CIT(A) has erred in sustaining the addition of Rs. 2,05,00,000/- on account of certain alleged payment made to Sh. Gurmeet Singh & Others for purchase of property as per para (x) of Para 5.4.3, page 105 of his order.

b). That the said addition is not sustainable as the so called alleged evidence have been found from the premises of third party namely Sh. Ajay Prabhakar.

c). That the Ld. CIT(A) while sustaining the addition has relied upon on certain presumptions and, thus, the addition have been sustained on surmises and conjectures.

3. That the Ld. CIT(A) has erred in sustaining the addition of Rs. 1,41,50,000/- on account of unexplained expenditure in respect of certain documents seized from the premises of third party, namely Sh. Ravi Kapoor, who has been working as a broker independently and confirming addition by applying the provisions of section 115BBE.

4. a). That the Ld. CIT(A) has erred in sustaining the addition of Rs. 33,95,000/- on account of certain documents seized from the residential premises of one Sh. Davinder Singh Ghai, who has no link or connection with the business of the assessee and further, treating the same as unexplained expenditure and applying the provisions of section 115BBE is not justified.

b). That the Ld. CIT(A) has failed to appreciate and has misread the said document, where there is no name of the assessee company and the said addition have been made purely on surmises and conjectures.

5. That the Ld. CIT(A) has erred in dismissing the ground of appeal with regard to mechanical approval as accorded by the Ld. Addl.CIT u/s 153D.

6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”

4. The Department in its appeal in ITA No. 1036/Chd/2024 has raised following grounds:-

“1. Whether upon facts and circumstances of the case and in law, the Ld. CIT (A) was justified in restricting the addition to Rs. 5,55,00,000/= - instead of Rs. 120,50,94,950/- made by the AO on account of unaccounted sale of residential plots on the basis of logical & rational extrapolation based on evidences collected during the search and post search enquiries?

2. Whether upon facts and circumstances of the case and in law, the Ld. CIT (A) justified in rejecting the valuation reports given by approved valuers of various properties in the projects developed by the assessee and called for by the AO during the assessment proceedings to come to the conclusion that the assessee is indulging in large scale undervaluation of properties sold by it and hence, reducing its turnover?

3. Whether upon facts and circumstances of the case and in law, the Ld. CIT (A) justified in relying on judgment of hon'ble Punjab and Haryana High Court in the case of VM Spinning Mills reported in (2011) 16 taxmann.com 199 to deny the benefit of extrapolation as the facts of the present case differ from the referred case as in present case the AO has relied on additional evidence and investigations to come to conclusion that the assessee is indulging in large scale undervaluation and hence, extrapolation is required?

4. Whether upon facts and circumstances of the case and in law, the Ld. CIT (A) was justified to delete the addition to Rs. 4,54,00,000/- made by the A.O on account of unaccounted sale of SCOs on the basis of logical & rational extrapolation based on evidences collected during the search and post search enquiries?

5. Whether upon facts and circumstances of the case and in law, the Ld. CIT (A) was justified in restricting the addition to Rs. 2,05,00,000/- instead of Rs. 71,08,87,130/- made by the A.O on account of unexplained investment made for the purchase of agriculture lands on the basis of seized documents?

6. Whether upon facts and circumstances of the case and in law, the Ld. CIT (A) has failed to appreciate the facts of the case

as well as seized documents of Sh. Gurmeet Singh C/o Ajay Prabhakar which establish that the rate of the agriculture lands is much higher than their registered sale value?

7. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal."

5. The assessee has raised additional ground of appeal by way of letter, dated 20.05.2025 which read as under:-

"1. That the Ld.AO has erred in law and on facts in framing the assessment under section 143(3) of the Income Tax Act, 1961, without fulfilling the mandatory conditions prescribed under Section 148, read with Explanation 2 to clause (iv) thereof, particularly by failing to record a valid and proper satisfaction note prior to initiating proceedings based on documents allegedly seized from another premises-such recording being a sine qua non for using such material against the assessee-rendering the assessment order bad in law and liable to be quashed.

2. That the Ld.AO has further erred in relying on documents seized during a search conducted on another person for making additions in the hands of the assessee, without obtaining the prior approval of the Principal Commissioner of Income Tax (PCIT), thereby rendering the assessment illegal, void ab initio, and without jurisdiction.

3. That the assessment framed under section 143(3) is bad in law, as it pertains to a year immediately preceding search year where the mandatory approval as prescribed under section 148B of the Income Tax Act, 1961, has not been followed. That in the absence of compliance with the provisions of section 148B read with CBDT issued the Manual of Office Procedure in February 2003, the assessment is vitiated and liable to be annulled.

4. That even the approval as sought by the Assessing Officer of the order u/s 143(3) from the Addl. CIT is nonest/ bad in law and the granting of the approval of the order u/s 143(3) by the Addl. CIT is null and void and, thus, assessment as framed u/s 143(3) vide order, dated 24.08.2023 deserves to be quashed."

5. That the Ld. CIT(A)-5, Ludhiana has erred in rejecting the books of accounts u/s 145(3) without giving any notice of enhancement as mandatorily required as per clause (2) of

Section 251 of the Income Tax Act, 1961 as per finding given at page 88 para (XX).

6. It was argued that the additional ground of appeal are legal grounds of appeal. All such facts are borne out from the order of the Assessing Officer and the order of CIT(A). The Ld. Counsel prayed for its admission being, a legal ground of appeal..The Ld. CIT (DR) submitted that the issue may be decided on merits.

7. We have gone through the additional ground of appeal and find that no fresh facts are likely to be investigated and, as such, by relying upon the judgement in the case of National Tharmal Plant, reported in 229 ITR 383, we admit the same.

8. In view of the above since the legal ground has been raised by the Ld. Counsel, we deem it fit to adjudicate first, the additional ground of appeal. The facts, in brief, are that there was a search and seizure operations conducted on the assessee on 16.11.2021. The assessee is engaged in the business of 'real estate'. The modus operandi of business of the assessee is that the assessee buys land and develops the same by leaving sufficient margin for Roads, Parks and for other infrastructure. He carves out plots and sells the same to different parties. Even, some of the SCOs were built by the assessee and they were sold. The assessee is maintaining the regular books of accounts in respect of above said activity, which have been duly audited. The assessee has been filing the returns on the basis of such audited books of accounts. This business is being carried on by the assessee since financial year 2007-08 and the regular assessments have taken place.

9. The facts leading to the above said issue are that there was a search and seizure operation conducted on the assessee's business premises and residential premises of the directors on 16.11.2021. Till that time, no return of income for Asstt. Year 2021-22 had been filed since as per CBDT Notification, dated 11th January 2022, the due date for furnishing the return of income for Asstt. Year 2021-22 on account of COVID, was further extended to 15th March 2022. Copy of that CBDT Notification was placed before the Bench. The return of Income for Asstt. Year 2021-22 was filed on 5th of March 2022 as per assessment order. The Notice u/s 143(2) of the Act, dated 27.06.2022 was issued to the assessee and the same has also been mentioned in First paragraph of the assessment order. The case was selected for compulsory scrutiny as per CBDT Instruction, after taking approval from the PCIT (Central), Ludhiana.

10. Along with the search on the assessee, the search action were also carried out on Sh. Ajay Kumar Prabhakar and Raj Kumar Sachdeva (Deed Writers), carrying on Profession of 'Deed Writing' independently and also on Sh. Ravi Kapoor (Broker), who is independently engaged in the real estate sector. The contention of the assessee by raising additional ground of appeal is that the assessment should have been completed u/s 147, instead of 143(3), given the timing of the search and the applicability of section 147 vis-à-vis the impugned assessment year, since the assessment year under consideration, immediately precedes the previous year, in which, the search was conducted u/s 132 of the Act. It was the argument of the Ld. Counsel that the impugned

year i.e. for Asstt. Year 2021-22 being covered under the "three assessment years preceding the year of search", could only have validly been reopened under section 147, therefore, the assessment framed under section 143(3) for Asstt. Year 2021-22 is without jurisdiction and bad in law.

11. The Ld. Counsel of the assessee by way of written submissions contended that the search was also conducted on Sh. Ajay Kumar Prabhakar, Sh. Raj Kumar Sachdeva and one Sh. Ravi Kapoor. It has been pointed out that the search on these persons was independent and separate from the case of the appellant. The AR has also submitted that the AO has relied upon material found during a separate search conducted on Sh. Ravi Kapoor, a real estate broker and Sh. Ajay Prabhakar and Sh. Raj Kumar Sachdeva. Additionally, it has been highlighted that at pages 24 and 27 of the assessment order, reference has been made to yet another search conducted in the year 2023, and certain material from that search has also been used in the applicant's assessment.

12. The core argument of the AR is that the AO has heavily relied upon material seized from third parties and not from material found in the premises of the applicant. It is contended that such reliance, in the absence of a proper satisfaction note recorded by the AO under section 147, establishing that the material belongs to the appellant, and without obtaining prior approval from the Ld. Pr. CIT, renders the assessment legally untenable. The Ld. Counsel submitted a chart as reproduced below to substantiate his argument of using the material as seized from third parties for making the addition in the hands of the assessee as under:-

Name of searched person along with the premises from whom such data was recovered	Name of Digital Device	Nature of data recovered from Relevant the digital device and alleged as of incriminating material	Relevant Page of assessment order
Ajay Kumar Prabhakar. VPO ayalikalan, Ludhiana	Pen Drive	Unsigned copy of Agreement between Mini Jain and Asha Garg in connection with Plot No.51 measuring 600 Yards, Sunview Enclave, Ludhiana.	11 & 12
	What's app chat found from Mobile Phone	Random what's app chat between Sh. Aiay Kumar Prabhakar and some unknown	30
	Loose Sheet referred as Ledger Annexure A-1 of seized Gurmeet material found from his Residential Premises	Ledger account of some Gurmeet Singh c/o Ajay Prabhakar	58-59
	Hard Disk	Payment Detail of Sh. Gurmeet Singh Bhangu	68
	Hard Disk	Loose Sheets containing details of cash paid to Gurmeet Singh with description "Manu Ji-cash paid to Gurmeet Singh C/o Ajay Prabhakar"	70-73
Ravi Kapoor H. No. 7200/50bawa Colony, Naveen nagar, Street No.4, Durga Puri, Haibowal Kalan, Ludhiana	Slip found from the E-Mail ID of Sh. Ravi Kapoor	Payments in connection with some Plot No. 286 & 287 without any indication of colony to which it relates and the person to whom it belongs.	14
	Diary found from residential premises of Ravi Kapoor	SA Entries with abbreviation SV or SA	16-17
	Excel Sheet found from the	Cash received by Sh. Sh. Ravi Kapoor in his	87-89

	E-Mail ID of Sh. Ravi Kapoor	personal business of brokering in real e state transactions.	
	Excel Sheet found from the E-Mail ID of Sh. Ravi Kapoor	Details of certain expenditure incurred against which payments were also received.	96-97
Some Another searched group		Some agreement to sell between waheguru Pal singh and Paras Kapoor	24-27
Davinder Ghai	Ledger account of Davinder Ghai in the books of JBK India found from his residential premises	Details of some transactions between Davinder Ghai and some other party namely JBK India	99

13. The AR further argued that after the search, the case of the assessee was centralized on 11th March 2022, and subsequently, a notice under section 143(2) of the Income-tax Act, 1961 was issued to assessee on 27th June 2022. Therefore, this is not a case, where the notice under section 143(2) was issued prior to the centralization of the case. Rather, the issuance of the notice occurred after centralization, at that point, the Assessing Officer (AO) was fully equipped with the information and material, including even those which were found during searches conducted on third parties. In this context, it is the contention of the AR that the AO has made use of material seized from other/third persons (i.e., not from the assessee) and yet did not comply with the mandatory procedural requirements under the Act. The Ld. AR, further argued that specifically, the AO neither recorded a satisfaction note establishing that such material belonged to the assessee, nor obtained the mandatory prior approval of the Principal Commissioner of Income Tax (PCIT), as

required under section 147. Hence, the AR argued that the assessment framed under section 143(3) is without jurisdiction as in the given circumstances, the AO ought to have invoked section 147 following the due process of law.

14. The Ld.AR draws our kind attention towards the provisions of section 147 as amended by Finance Act, 2021 read with explanation 2 of section 148 thereto. The relevant extract of explanation 2 is reproduced below

“Explanation 2.—For the purposes of this section, where, —

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the “three assessment years” immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.”

15. It was, thus, concluded by the Ld. Counsel that a search has indeed been conducted independently on the assessee and other parties carrying on separate and independent business. However, the assessment in the present case have been framed by importing and relying upon material seized during independent searches conducted on Sh. Ravi Kapoor and Sh. Ajay Kumar Prabhakar, material found and seized in such searches have been used by the Assessing Officer (AO) to make additions in the case of the assessee.

16. Our attention was drawn by the Ld. Counsel on notice issued u/s 143(2), dated 27.06.2022, which reads as under:-

"The Income Tax Department appreciates your contribution, towards development of the Nation by filing of your return of income for the Asstt. Year 2021-22 vide Ack. No.293502530050322 on 05.03.2022.

'While acknowledging the care you may have taken in preparing the return of income, there are certain issues on which further clarification is required. Therefore, the return of income has been selected for scrutiny assessment in accordance with the provisions of the Income-tax Act, 1961'.

'Your may submit or cause to submit any evidence on which you may rely in support of your return of income_electronically in 'e-Proceedings' facility through your account in e-Filing website (www.incometax.go.in) at your convenience on or before 11.07.2022.

It is advised that you should gather all the information, documents, evidences, etc. in respect of various financial transactions, you have entered during the Assessment Year under consideration, which may be relevant for the scrutiny proceedings. Detailed questionnaire(s) or communication may be issued during the course of assessment proceedings. As and when questionnaire(s) or communication is issued, you are required to provide specific point-wise response within the time specified."

It was contended by the Ld. Counsel that notice was only limited to the issue with regard to the return of income as it is apparent from the above language of the notice and referred to the proviso of section 148B, which reads as under:-

Prior approval for assessment, reassessment or recompilation in certain cases.

148B. No order of assessment or reassessment or recompilation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

17. It was further argued by the Ld. Counsel that assessment for the impugned year have been framed u/s 143(3) as is evident from 1st page of the assessment order and at the last page of the assessment order 'approval' have been obtained from the superior authority. Copy of the said approval letter, which was received by the office of Addl. CIT on 22nd of August 2023. A perusal of the same is as under as recorded by the Addl. CIT:-

"2. In this regard, I have gone through the case records, finding in the appraisal report and case was discussed with the AO from time to time. On the case of discussion and replied received, I am satisfied that the draft, assessment note put for approval in the above mentioned case for A.Y. 2021-22 is justified and fair.

3. In view of above facts, the draft assessment order u/s 143(3) of the Income Tax Act, 1961 submitted by the AO in the case of M/s Homelife Buildcon Pvt. Ltd. (PAN AABCH5690M) for the A.Y. 2021-22 is hereby accorded approval by the undersigned in compliance of CBDT, New Delhi order u/s 119 of the Act vide letter F.No.299/36/2021-22-Diir (Inv.III)/577, dated 15.07.2022."

18. It was argued by the Ld. Counsel that the approval does not mention or consider any of the seized material sourced from the search carried out on third parties, conducted on Sh. Ajay Kumar

Prabhakar, Sh. Raj Kumar Sachdeva and Sh. Ravi Kapoor, though, the Assessing Officer heavily relied upon on those material as seized from them in making the addition. Further, the approval merely stated that the 'appraisal report' was considered, without any reference to the original documents seized or to the statutory procedure u/s 148B and, thus, it was argued that the assessment as framed by the AO, deserves to be quashed.

19. It was further by way of submissions argued as under:-

(i) The Illegality of Assessment Under Section 143(3) Instead of Section 148:

In the instant case, the Ld. AO has erroneously made the assessment under Section 143(3) of the Act instead of Section 148 of the Act. Such initiation of assessment by issuing a notice under Section 143(2) instead of Section 148 is bad in law and liable to be quashed. Furthermore, the order passed under Section 143(3) without obtaining the mandatory approval under Section 148B of the Act is also bad in law and liable to be quashed, for the following reasons:

(ii) Where a specific provision for assessment is available, the general provision of law cannot be applied.

i. The provisions of Section 143(2) and 143(3) are general in nature, applicable when an Assessing Officer seeks to verify a return of income to ensure no understatement of income, excessive loss, or underpayment of tax such opinion is formed only on the basis of ITR filed by the assessee.

ii. Prior to the amendment by FA 2021, assessments in search cases were mandatorily carried out under Section 153A. By way of amendment in FA 2021, this specific procedure was subsumed into the provisions of Section 148 of the Act, and not Section 143(2), as explicitly clarified in the Memorandum Explaining Finance Bill 2021.

iii. Since the specific provisions of Section 153A & 153C have been subsumed under Explanation 2 of Section 148 of the Act due to the FA 2021 amendments, the general provision of Section 143(2) of the Act cannot be applied in the instant case.

(iii). A brief overview of the legislative history and amendments concerning Search Assessments is provided:

- **A. Finance Act 1995:** Introduced Chapter XIV-B as a special mechanism for search assessments under Section 158BC.
- **B. Finance Act 2003:** Replaced the provisions related to search assessments with Sections 153A to 153D.
- **C. Finance Act 2021 and 2022:** Subsumed the provisions of search assessment under Sections 147, Explanation 2 to Section 148, Section 149, Section 148B, and Section 151 of the Act.

Thus, the legislature, through various amendments, has consistently covered assessment matters related to search under Section 132 of the Act within specific provisions. Such specific provisions cannot be ignored in search assessments, and in their place, a general provision of assessment like Section 143(2), which is meant for limited purposes, cannot be applied, as affirmed by the Hon'ble Jurisdictional High Court and the Hon'ble Apex Court in their aforementioned judgments.

Principle of Generalia specialibus non derogant

The principle of *Generaliaspecialibus non derogant* (general provisions do not derogate from special ones, i.e. when there is a dispute between general and specific provision of a law, specific provisions should always prevail) squarely applies in this case. Since the subject matter of assessment falls under a specific provision of the Act (Section 148 and its related provisions for search assessments), it must be governed by that specific provision and not by any general provision. Reliance in this respect is placed on the following judgments:

- *Gopal Das Gupta v. Union of India*[1971] 80 ITR 200 (CAL.)
- *Paharpur Cooling Towers Ltd. v. Deputy Commissioner of Income-tax*, [2003] 85 ITD 745 (KOL.)

(iv) Applicability of Section 148; Explanation 2 to the Assessment Year Preceding the Search Year.

- i. It is reiterated that the search in the case of the assessee was carried out on December 8, 2021, which falls in FY 2021-22. Hence, the search year in the instant case is AY 2022-23. It is further submitted that the case under consideration pertains to AY 2021-22, which is the assessment year immediately prior to the search year. It is important to note that there has always been a consistent parity in the procedure of search assessments, despite

amendments over time. This parity is elaborated below for consideration.

Particulars	Provisions of Block Assessment u/s 158BC	Provisions of Search Assessment u/s 153A	Provisions of Search assessment u/s 148	Provisions of Search assessment u/s 158BC
Applicability	In respect of search initiated prior to 31/05/2003	In respect of search initiated after 31/05/2003 and before 01/04/2021	In respect of search initiated after 01/04/2021 till 31/08/2024	In respect of search initiated after 01/09/2024
Filing of Return of Income afresh.	158BC(a)	153A(1)(a)	148	158BC(1)(a)
Approval from Superior Authority before passing assessment order.	Approval before passing of an order required u/s 158BG of the Act	Approval before passing of an order required u/s 153D of the Act	Approval before passing of an order required u/s 148B of the Act	Approval before passing of an order required under proviso to section 158BG.
Approval before issuing notice.*	NA	NA	Approval before initiation of assessment applying Explanation 2 of Section 148 is required as per Proviso to Section 148 read with Section 151 (now second proviso to section 148 after amendment by FA No 2 of 2024)	Approval before issuance of notice is required u/s 158BC(3) of the Act.

* The Approvals in these sections are statutory approvals and not administrative.

As it is evident from the foregoing, the legislature has consistently maintained a distinct parity in the provisions related to assessments conducted in search cases across different regimes. In stark contrast, none of these established provisions, which have been consistently present in all search assessment schemes, are found within the framework of assessment under Section 143(3) of the Act.

This deficiency is evident in two critical respects:

1. Absence of Statutory Right to File a Fresh Return:

Section 143(3) does not envisage the filing of a fresh return of income by the assessee pursuant to a search or requisition action. The statutory omission of such a provision effectively deprives the assessee of the vital opportunity to voluntarily disclose previously undisclosed income through a revised or fresh return. Consequently, the assessee is denied a legitimate avenue to regularize their tax position and potentially mitigate the exposure to penal and prosecution consequences under the Act.

2. Non-requirement of Statutory Approval:

Sections 143(2) and 143(3) do not mandate the obtaining of prior statutory approval—either at the stage of initiation of assessment proceedings or before the passing of the final assessment order. This stands in contrast to the established scheme governing search assessments under Sections 153D and 148B, wherein the Assessing Officer is statutorily obligated to seek prior approval from specified higher authorities. The absence of such a safeguard under Section 143 undermines the procedural checks that are integral to ensuring fairness and accountability in assessments arising out of search-related information.

3. Use of material found from the search of third party.

That the material used against the assessee has been sourced from a third-party search, and the assessment has been carried out by issuing a notice under section 143(2) of the Income-tax Act, 1961, without adhering to the statutory procedure prescribed under section 147. This amounts to a clear avoidance of the statutory safeguards laid down by the legislature. That when the Assessing Officer (AO) of a person other than the searched person intends to utilize material found during a search conducted on a third party, he is mandatorily required to record satisfaction that such material belongs to or pertains to the assessee. Further, prior approval from the Principal Commissioner of Income Tax (PCIT) is required, as specifically provided under

Explanation 2(iv) to section 147. If assessment proceedings are initiated merely under section 143(2), bypassing the essential preconditions and approvals under section 147, it would result in a complete circumvention of the legislative safeguards. Such an approach would defeat the very purpose and intent of the provisions laid down in the Act. The assessment under section 143(3) without complying with the jurisdictional requirements, rendering the assessment bad in law and without authority.

The requirement is to first complete the assessment under section 143(3) on the basis of the returned income, and thereafter, for utilizing the material found from a third-party search or from the assessee's own search pertaining to the years immediately preceding the search year, the procedure under section 147 is mandatorily to be followed. Therefore, the assessment is required to be initiated under section 147, which has been made mandatory pursuant to the amendment effective from 01.04.2021

Hence, from the above, it is unequivocally clear that the provisions of Section 143(3) of the Act are not designed or meant for years immediately ending before search Year. In the present proceedings, the assessment should have been mandatorily made under Section 148/147 of the Act only.

20. The Ld. CIT (DR) argued that since the assessment was framed u/s 143(3), the Assessing Officer was entitled to look into all the evidences relating to the assessment year concerned and also AO is duty bound to consider other information relating to assessment year under consideration for the purposes of making the assessment. During the course of hearing, the CIT (DR) was specifically asked whether any satisfaction as mandated under the provisions of law, was recorded by the AO before utilizing such third party material. However, no satisfaction note or document evidencing such recording was placed on record and neither the same is borne out from the assessment order or order of the CIT(A) wherein, nothing has been mentioned about such facts.

21. We have gone through the additional ground of appeal as taken before us and also the assessment order, order of the CIT(A), written brief synopsis of the assessee on the issue of additional ground of appeal and also the arguments of the Ld. CIT DR. The facts are not in dispute viz-a-viz the facts that the search was conducted on the assessee on 16.11.2021 and also the fact that separate search was conducted on Sh. Ajay Prabhakar (Deed Writer) and Sh. Ravi Kapoor (Broker in real estate) and distinct and different Panchanama was drawn in their respective names in their cases. In so far as, the first issue regarding the passing of order u/s 143(3) instead, of framing the assessment u/s 147 is concerned, we find that after the search was conducted on 16.11.2021, the case was centralized on 11.03.2022 and the return of Income was filed by the assessee for Asstt. Year 2021-22 as per the extended time available on 5th of March 2022 and, thus, it is a case where the notice u/s 143(2) was issued after centralization of case and a sufficient time had passed from the date of search i.e. 16.11.2021 to the date of issue of notice u/s 143(2), dated 17th of June 2022 and the Assessing Officer was well aware of the information and material including, the material found and seized from the third parties namely Sh. Ajay Prabhakar and Sh. Ravi Kapoor and further to that, we have carefully gone through explanation -2 to section 147 as amended by Finance Act 2021 as 'cited supra', which clearly lays down the mandatory procedure to be followed in search assessment and which apparently has not been followed in the present case.

22. The core question before the Bench is whether, in the facts and circumstances of the case, the assessment ought to have been framed under section 143(3) or under section 147 of the Income-tax Act, 1961. From the plain reading of the statutory provisions and in light of Explanation 2 to section 148, it becomes abundantly clear that the legislature has widened the scope of reassessment, particularly through the Finance Act, 2021, which introduced significant changes to the reassessment regime. These amendments explicitly include instances involving third-party search material and make it incumbent upon the Assessing Officer (AO) to follow the procedure under section 148, including obtaining prior approval from the Principal Commissioner of Income Tax (PCIT).

23. In the present case, the AO proceeded to frame the assessment under section 143(3) despite relying heavily on material found during searches conducted on third parties. The AO, instead of complying with the jurisdictional preconditions laid down under the reassessment provisions, proceeded without recording the mandatory satisfaction and without obtaining prior sanction from the competent authority. This conduct not only, violates the express mandate of law, but also renders the assessment a jurisdictional error. The AO has, in fact, gone a step further by bypassing the legal safeguards embedded in section 147, thereby vitiating the assessment proceedings ab initio

24. Furthermore, a plain reading of the Finance Act, 2021 and the Explanatory Memorandum to the Finance Bill clearly indicates that the legislative intent was to bring all searches conducted on

or after 1st April 2021 within the ambit of the new reassessment regime under section 147 of the Income-tax Act, 1961. This new regime was introduced through significant amendments to section 147 and section 148, along with the insertion of Explanations 1 and 2, and the concept of "information suggesting escapement of income" was explicitly defined. From the reading of Explanation 2 to Section 147, it is evident that in cases where a search is initiated on or after 1st April 2021, the Assessing Officer shall be deemed to have information, which suggests that income chargeable to tax has escaped assessment for three assessment years immediately preceding the assessment year relevant to the previous year, in which, the search is initiated, provided that books of account, documents, assets, bullion, jewellery, or other valuable articles are seized or requisitioned in the course of the search. This deeming provision is not limited only to the person searched, but also extends to "other persons", provided that due procedure under the law-specifically, the recording of satisfaction that such seized material belongs to the assessee and obtaining prior approval from the PCIT-is followed.

25. In the present case, where the AO has admittedly relied upon material seized during searches conducted on other persons, i.e., Sh. Ravi Kapoor and Sh. Ajay Kumar Prabhakar, it was mandatory for the AO to invoke the provisions of section 147 and not to bypass the statutory framework by proceeding under section 143(3). Granting such unfettered powers to the AO to rely on third-party material without adhering to the safeguards under

section 147 would defeat the very purpose of the amendment and open the floodgates to arbitrary assessments.

26. The relevant extract Memorandum explaining the finance bill is reproduced as under:-

'(ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

(VI) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year, in which, the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted."

27. The notice issued under section 143(2) was also produced by the AR. Upon perusal of the said notice, it is evident that the assessment under section 143(3) was initiated solely for the purpose of verifying the return of income filed by the assessee. In such circumstances, the importing and reliance upon material seized from third-party searches, namely, those conducted on Sh. Ajay Kumar Prabhakar and Sh. Ravi Kapoor, goes beyond the jurisdiction conferred under section 143(3). Particularly, where the applicable law— Explanation 2 to section 148 (as amended by the Finance Act, 2021) mandates prior approval from the Principal Commissioner of Income Tax (PCIT) before initiating reassessment proceedings on the basis of such material, the failure to comply with that requirement renders the assessment legally untenable.

28. In the present case, the AO did not issue a notice under section 148, nor did he follow the due process of law under the new reassessment framework, including recording of satisfaction and obtaining prior sanction from the PCIT. Therefore, the assessment framed under section 143(3), because of being based on third-party material without adhering to statutory safeguards, is bad in law. The AO was only empowered to verify the return of income and restrict his scope of inquiry accordingly; he was not permitted to expand the assessment by importing and relying upon third-party seized material without following the mandatory procedure laid down under the law.

29. Furthermore, there exists a mandatory statutory requirement that in all cases involving search-related assessments falling within the assessment year, immediately preceding the year of the search, the prior approval of the Joint Commissioner is required under section 148B of the Income-tax Act, 1961. In the present case, the Assessing Officer (AO) has proceeded without obtaining such approval, which is a clear violation of the procedural safeguards envisaged under the law and, as such, vitiates the assessment proceedings. In the present case, approval has been granted for assessment framed u/s 143(3) only.

The relevant provision of section 148B reads as under:

Prior approval for assessment, reassessment or recompilation in certain cases.

148B. No order of assessment or reassessment or recompilation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior

approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

30. A comparison of the requirement of approval under section 153D and section 148B is drawn, from which it is evident that approval under section 153D was earlier required only in cases where assessments were completed under section 153A/153C and also for search year. However, under the amended provisions, approval under section 148B is now required in all cases where proceedings are initiated pursuant to a search, requisition, or survey, or where asset/material/documents found during such search pertain to or relate to another person. In such cases, the Assessing Officer must take the approval under section 148B from the specified higher authority.

Aspect	Section 153D	Section 148B (with Explanation 2 to Section 148)
Applicable Period	Search initiated between 01.06.2003 to 31.03.2021	Search/survey initiated on or after 01.04.2021 but before 01.09.24
Context	Search assessment under Section 153A/153C	All cases where assessment/reassessment is based in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148
Triggering Event	Search or requisition on the assessee under Sections 132/132A or material is used against assessee from third party search	1. Search/requisition on assessee 2. Survey (except under 133A(2A)) on assessee 3. Search/requisition on another person, but assets/documents relate to assessee
Purpose of Approval	Supervisory check in search assessments to ensure fairness and oversight	Prevent misuse of powers in reassessment based on search/survey-related information under new regime
Who Gives Approval	Joint Commissioner (mandatory)	Any of: Joint Commissioner / Addl. Commissioner / Joint Director / Addl. Director

Aspect	Section 153D	Section 148B (with Explanation 2 to Section 148)
Deeming Presumption	Not expressly stated	Explanation 2 creates a legal presumption: AO is deemed to have information suggesting income has escaped assessment in specified cases

31. This requirement has also been explicitly discussed in the Explanatory Memorandum to the Finance Bill, 2022, which emphasizes the need to protect taxpayer rights by ensuring that no reassessment is carried out without proper sanction and due process. It is further seen that the Joint Commissioner has not even been supplied seized material relied upon as seized from third-party in the present assessment. There exists a prescribed procedure under which such seized material (including material found from third-party premises) is to be forwarded to the approving authority at least 30 days in advance of granting approval. This procedural safeguard is crucial to prevent arbitrary and unregulated use of third-party material.

32. In the present case, there is no evidence to demonstrate that the prescribed procedure was followed, or that the Joint Commissioner was apprised of the seized material by forwarding copies of the documents found from the third party prior to framing the assessment. **The complete failure to comply with the mandatory provisions of section 148B renders the reassessment not only procedurally defective but also without jurisdiction.**

33. Even we find while framing the assessment under section 143(3), the Assessing Officer (AO) has, on the last page of the assessment order, referred to an approval obtained from the supervisory authority. However, a bare perusal of this approval

shows that it was obtained in reference to F. No. 299/36/2020/1DAR/INV3(3)/577 dated 15.07.2022, i.e., in accordance with the CBDT Circular dated 15th July 2022, and not under the mandatory provisions of section 148B of the Income-tax Act, 1961.

At the outset, it is important to note that the approval so obtained does not mention or consider any of the seized materials sourced from the third-party. searches conducted on Sh. Ajay Kumar Prabhakar and Sh. Ravi Kapoor, despite the AO having heavily. relied on those materials in framing the additions. The approval merely states that the appraisal report was considered, without any reference to the original documents seized or to the statutory procedure outlined under section 148B.

It is pertinent to refer to the Manual of Office Procedure in February 2003, which lays down a mandatory protocol: that in all search cases, especially where material pertains to persons other than the one searched, such material is to be forwarded in original to the approving authority, and a draft order is required to be submitted for approval at least 30 days in advance. In the present case, the approval letter was issued by the DCIT only on 22nd August 2023, which clearly contravenes this procedural requirement. **This procedural lapse is further compounded by the judgment of the Hon'ble Supreme Court in Serajuddin and Co. case, [2024] 163 taxmann.com 118 (SC) wherein it was held that in search cases, strict adherence to the approval protocol as laid down in the departmental Manual of Office Procedure in February 2003 and law is essential to uphold the validity of the assessment.**

34. Thus, from the above, it is quite evident from the approval granted by the Addl.CIT(Central), there is no mention or consideration of the seized material sourced from the third party, namely Sh. Ajay Prabhakar and Sh. Ravi Kapoor, though, we find that in the assessment order and in the order of CIT(A), both the authorities have heavily relied upon on such seized material and it only states that the appraisal report have been considered without any reference to any original documents seized for statutory procedure outlined u/s 148. Thus, in view of above, the assessment as framed by Assessing Officer vide order dated 24.08.2023 is quashed.

35. Though, we have quashed the assessment as framed by the Assessing Officer but we find that both the assessee and the department has raised various grounds on merits and in view of the facts and circumstances of the case, we deem it appropriate to adjudicate the grounds as raised by the assessee and department on merits.

36. Ground No. 1,2,3, in department appeal is common with ground of Appeal No.1 & 2 in the appeal of the assessee. The fact that the assessee is a developer in real estate is not in dispute and the modus operandi as disclosed in the order of AO and CIT(A) is that the assessee buys the land and he develops the same after leaving the margin for Roads, Parks and Streets, the plots are cut in different sizes and then, they are sold to different parties. This activity of sale of plot started in financial year 2007-08 onwards and the said plots have been sold at different rates over the years. The Assessing Officer for the said addition as per ground No. 1,2, &

3, as raised in department appeal has discussed this issue from pages 2 to 52 of the order and has relied upon the statement of the independent deed writer, Sh. Ajay Prabhakar and his Associates, Sh. Raj Kumar Sachdeva. On one valuation report found during the course of search from the office of the assessee company of Sh. 'Harbans Singh Sekhon', wherein, the valuation of particular portion of land, in the colony of assessee co. was made at Rs. 30,000/- per sq. yard, copy has been reproduced at pages 6 to 8 of the order of the AO. The statement of 'Sh. Harbans Singh Sekhon' Valuer was recorded, in which, he stated that the market value of the land in the year could have been Rs. 40,000/- to 45,000/- in the month of January 2021 and the valuation was made 10% to 15% lesser than that at prevailing market value to cover the fluctuation element. The reference was also made to one unsigned agreement, as found, from the premises of 'third person' from the office of Sh. Ajay Prabhakar (Deed Writer), which was unexecuted and unsigned. In it the rate of particular plot in the colony had been mentioned at Rs. 55,500/- per sq. yard. Similarly, there was statement of one associates of Sh. Ajay Prabhakar, namely Sh. Raj Kumar Sachdeva, who was also searched, in which, he stated that the market rate in the 'Homeland Buildcon Pvt. Ltd.' is 30,000/- to 50,000/- per sq. yard. Further, to that, it has also been mentioned that from the premises of Sh. Ravi Kapoor, one of the independent broker in 'real estate', dealing in real estate, a digital evidence in the shape of 'slip' was found from the digital data of the Mobile of Sh. Ravi Kapoor. In this slip, certain cash payment appears to have been made for the plot No. 286 & 287. It was alleged by the AO that signatures of

one of the director, namely Sh. Manu Gupta were also there, but, it was denied by Sh. Manu Gupta & Sh. Ravi Kapoor and that copy has been placed at page 14 of the assessment order.

37. Besides that, it was argued by Ld. Counsel that certain parties, who had purchased the plots from the assessee company through registered purchase deeds, such persons are independent buyers, not related to the directors of the company at all and they had got the valuations of their plots done from 'structure designers', 'project engineers' / Chartered Engineers and such valuation were got done for the purposes of raising loan by them for construction of their houses. This information was gathered by the Assessing Officer during the course of assessment proceedings, wherein valuation of plot got by them were between Rs. 45,000/- to 58,500/- for raising loan only. Copies of such valuation reports as gathered from different plot holders by the AO have been reproduced in the assessment order. Based on such evidences, the Assessing Officer adopted the sale price of Rs. 38,500/- per sq.yard for residential plot and since during the year under consideration, 72 residential plots were sold, having an area of 38,670/ sq. yards, the Assessing Officer adopted the rate of Rs. 38,500/- per sq. yard in respect of 70 plots sold during the year and extrapolated such rate for 70 plots and made an addition of Rs. 120,50,94,950/-. For two plots Nos. 286 & 287 in the names of Praveen and Surbhi Banda, adopted the rate of Rs. 61,000/- per square yard on the basis of 'digital evidence' found from the mobile of third person, Sh. Ravi Kapoor as stated above.

38. It was argued that during the course of assessment proceedings, assessee submitted various replies and stated that Sh. Ajay Prabhakar, Sh. Raj Kumar Sachdeva and Sh. Ravi Kapoor, are not employee of the company. They have nothing to do with real estate business of the company and, thus, the so-called evidences from the third party cannot be relied upon. Further, as regards the statement of Sh. Ajay Prabhakar, Sh. Raj Kumar Sachdeva or Sh. Ravi Kapoor or any other person concerned, no reliance could be placed on such statement of the 'third party' without their being any corroborative evidence found from the business premises of assessee. As regards, the valuation report of Sh. Harbans Singh Sekhon is concerned, it was argued by the Ld. Counsel that mere statement cannot be taken as any factual evidence of any unaccounted transaction by the assessee. Neither Sh. Ajay Prabhakar nor Sh. Raj Kumar Sachdeva are the partners, directors or employee of the company. Both of them are independent 'stamp vendors', working since 1996 under the License No.118 issued by the ADC, Ludhiana. Further, Sh. Ajay Kumar Prabhakar retracted from his statement before the AO and has even stated in his statement recorded on 05.12.2022 by the AO that, he is merely a stamp vendor. Beside writing registration deeds in respect of sales executed by the Homeland Buildcon Pvt.Ltd., the same profession he is doing in respect of various other parties A duly sworn affidavit was filed before the AO by Sh. Ajay Prabhakar, copy of which have been placed in the Paper Book, Part-III, in which, he has retracted from his earlier statement about the rates of plot lateron, after going through the statement recorded during search on 16.11.2021, which was recorded late at

night and he clarified that he never stated about the rates of plots at Rs. 30,000/- to 40,000/- and that was recorded under pressure/ coercion and duress and further, he had nothing to do with the sale and purchase of the plots of Homelife Buildcon Pvt. Ltd. It was further stated by the Ld. Counsel that even in respect of Sh. Ravi Kapoor, with regard to certain notings found from his mobile, wherein, there is reference to certain plot Nos. 286 & 287, he categorically stated during the search that he has been engaged in the business as 'broker' in real estate. He has been showing his income on account of 'brokerage' in his returns filed prior to the search and later on and such notings had nothing to do with actual sale price of the plot by Homeland Buildcon Pvt. Ltd. He further affirmed that the signatures as per digital data on the slip were not of Sh. Manu Gupta and such noting was related to his own brokerage business. Even, Sh. Manu Gupta denied such signatures. It was further argued by the Ld. Counsel that the registration had been made at circle rates and relied upon on the judgment of K.P, Varghese, reported in 131 ITR 597 that consideration has to be considered as per registered document without there being any corroborated evidence found of any on money, no adverse view could be drawn.

39. Further, it was argued by the Ld. Counsel regarding one unsigned agreement found from the premises of Sh. Ajay Prabhakar, between Smt. Asha Garg and Sh. Minni Jain, in respect of one plot in the Sunview Enclave. It was vehemently argued that the said plot was sold by assessee company to 'Minni Jain' on 06.06.2018 and even the Statement of Smt. Asha Garg and Mini

Jain was recorded. Such agreement as recovered from the 'Pen Drive' of Sh. Ajay Prabhakar was totally denied by both the ladies in their statements before the department. The assessee relied upon a number of judgments for the proposition that no evidentiary value can be attached to the statement of 'third party' or any of the parties during search or post search. It relied upon the judgments in the case of CIT Vs. Mantri Share Brokers (P) Ltd., reported in 2018) 90 taxman.com 280 (SC), Sh. Jagbir Singh Nehra in ITA No. 687/Chd./2023 and judgment of M/s Gurdip Cycle Industries Vs DCIT in ITA No. 705/Chd/2023, Maple Destinations and Dream build Pvt. Ltd. Vs DCIT, in ITA No. 1509/Del/2018 and many other judgments. It was further stressed that the plot holders, who have purchased the plots from the assessee company for raising 'super structure' has no link or connection with the assessee at all and such valuations of their plots were not recovered from the assessee's premises. Further, the Assessing Officer has wrongly mentioned such valuations from DVO, which is incorrect. Even, the valuation report of Sh. Harbans Singh Sekhon, it was explained by Sh. Jagjit Singh Grewal director that said report was obtained to support the transaction by the assessee within 'Aayali Kalan Co-operative Agricultural Multiple Society. The valuation was purposely enhanced so as to make the deal lucrative for the 'exchange of land' with the said society and, thus, under such circumstances, no money had passed on. This fact is further supported by the actual transaction of land executed between the assessee and said society and the documentary evidence had been furnished supporting the above said claim of the assessee. It was further argued that not any

single evidence connected with the assessee can be linked to the assessee concerned. No cross examination of Sh. Ajay Prabhakar or Sh. Raj Kumar Sachdeva had been given and there is complete lack of corroborated evidence to support the conclusion drawn by the Assessing Officer. The extrapolation made by Assessing of the entire 70 plots by applying a rate of Rs. 38,500/- per sq. yard, is totally against the facts and circumstances of the case and to which, the Ld. CIT(A) has rightly deleted the addition as per finding given by him from pages 80 to 93 of his order. It was further argued that in respect of two plots on the basis of digital data found from third party namely Sh. Ravi Kapoor, since both Sh. Ravi Kapoor and Sh. Manu Gupta whose signatures have been alleged to be there, on that digital evidence were denied right from the date of search and during the course of assessment proceedings. No original document was produced by the Assessing officer of such evidence on the basis of which, the CIT(A) has confirmed the addition of Rs. 5.55 crores as per para (xxx), page 93 of the order of the CIT(A). Further, it was vehemently argued that the title deeds have been executed in the names of Sh. Praveen Bhandra and Smt. Surabhi Bhandra for plot No. 286 & 287 for Rs. 55 lacs which is a registered document and no statement of Sh. Praveen Bhandra and Surbhi Bhandra the purchaser of plots had been recorded during search or later on during the course of assessment proceedings. Since the evidentiary value of registered document cannot be ignored and brushed aside merely on the basis of certain digital data from third party, which has not been even accepted by Sh. Ravi Kapoor that it belongs to assessee, thus, no adverse view can be drawn.

40. Further, the assessee by relying on number of judgements on the issue that merely on the basis of third party statement or on the basis of, the document found from the premises of third party, no adverse view can be taken in the hand of assessee. Reliance is being placed on the following judgments:-

- i). *CIT Vs. Odeon Builders (P) Ltd. ,reported in 418 ITR 315 (SC)*
- ii). *Judgement of Chandigarh Bench in the case of DCIT Vs Sh.Amarjit Singh in ITA No.774/Chd/2023, vide order date .6.3.2025.*
- iii). *PCIT (Central) Vs DSG Paperr (P) Ltd., reported in [2024] 161 taxmann.com 585 (P&H).*
- iv). *ITO Vs Dr. R.LO. Narang, reported in [2008] 174taxmann 96 (Chandigarh)*
- v). *ACIT Vs Ms. Katrina Rosemary Turcotte , reported in [2017] 87 taxmann.com 116 (Mumbai).*
- vi). *ACIT vs Layer Exports (P) Ltd., reported in 88 taxmann.com 620 (Mum.,Trib.)*
- vii). *Prarthana Construction (P) Ltd. Vs DCIT, reported in [2001] 118 taxmann.112 (Ahdl.)*
- viii). *Sh. Omar Salay Mohammed Sait Vs CIT, reported in 37 ITR 151 (SC)*
- ix). *CIT Vs Maheshwari Synthetics (P) Ltd., reported in [2016] 73 taxmann.com 253 (P&H).*

41. Reliance was also placed on the following judgments:-

- i). *Judgement of Chandigarh Bench of the ITAT in the case of DCIT Vs. Sh. Amarjit Singh in ITA No. 774/Chd/2023 & Others, dated 06.03.2025.*
- ii). *Judgement of Chandigarh Bench of the ITAT in the case of ITO Vs. Sh. Ashwani Kumar Jain in ITA No.1083/Chd/2024 , dated 12.03.2025.*

42. Regarding the digital evidence, reliance was placed on the judgment of Madras High Court in the case of Saravana Selvarathnam Retails (P) Ltd. Vs CIT, reported in [2024] 160 taxmann.com 28, in which, by referring to the Instruction of CBDT, wherein mandatory instruction have been laid as per digital evidence Investigation Manual issued by CBDT while conducting search and the same have not been followed in the present case. No reliance could be placed on such digital evidence as found from the residence of Sh. Ravi Kapoor/Sh. Ajay Prabhakar.

43. It was further argued that the huge addition has been made but books of account have not been rejected. The assessee relied upon the following judgments for the preposition that no addition could be made without rejecting the books of accounts:-

- i). CIT Vs Anil Kumar & Co., reported in ITA No. 200001 & 200002 vide order, dated 25.02.2016 (Karnataka High Court)
- .ii). ITO Vs Amit Verma as reported in ITA No.4558/Del/2011 vide order, dated 19.12.2012 (Del. Bench).
- iii). ITO Vs M/s Rajeev & Company, in ITA No. 46/Lkw/2012, vide order, dated 17.12.2014. {ITAT LUCKNOW}.

44. It was further argued by the Ld. Counsel that the CIT(A) has arbitrarily exercised his power to reject the books of accounts u/s 145(3) and stated that no estimate could be made without rejecting the books of accounts u/s 145(3). At the outset, the Ld. Counsel pointed out that additional ground of appeal, which have been taken, which is ground No. 5 in the additional ground of appeal. Here, it has categorically been stated that before

making any enhancement, it is mandatory requirement as per clause 2 to section 251 that the CIT(A) is bound to give a notice of enhancement. Such notice has not been given by the CIT(A) and, thus, it was argued that observation of CIT(A) for rejecting of books of accounts could not be made by the CIT(A) suo-moto. It was also stated that this is contrary to settled law. Hence finding by the CIT(A) of rejection of books is not valid as no notice of enhancement had been given by the CIT(A). Further, reliance was made on the following case laws that without rejecting the books, no addition could be made:-

- i). Judgement of Punjab & Haryana Court in the case of Aggarwal Egeeneering Company 302 ITR 346.
- ii). Judgement of ITAT in the case of S.M. Hasan, STO Vs New Gramophone House AIR 1977 SC 1788 (SC).
- iii). CIT Vs Bansal Sons, Ludhiana, ITR No. 117 of 1999 (P&H),
- iv). Bhalla Brothers, Ludhiana ITR No. 70 of 1998 (P&H).
- v). Judgement of ITAT, Jainpur Bench in the case of Tarachand Shanitlal, reported in 28 TTJ 128.

45. Lastly, it was argued that in view of the judgment of Delhi High Court in the case of 'Saksham Commodity', reported in 161 taxman.com 485 and Abhisar Buildwel Pvt. Ltd., requirement of incriminating material has to be there. No extrapolation could be made, even if some incriminating material is found and the addition had to be restricted to the incriminating material, if any, found during the course of search. Reliance was placed on the judgment of Punjab & Haryana High Court in the case of V.M. Spinning Mills, reported in [2011] 16 taxman.com 199 as well that any addition has to be restricted on the basis of incriminating evidence. In the present case, nothing was found from the

premises of assessee and, as such, no addition was liable to be made.

46. Regarding ground No. 4 as taken by the department is concerned, it was argued that the whole basis of addition made by the AO have been discussed in his order and again the reliance has been placed on the statement of Sh. Raj Kumar Sachdeva. No corroborative evidence or any other incriminating material was found from the premises of assessee for any 'on money' in respect of SCO. It was argued that the statement of Sh. Raj Kumar Sachdeva has no evidentiary value. Regarding the valuation report, it was not found from the premises of the assessee and during the course of assessment proceedings, the AO obtained the said valuation report of SCO, which was owned by Smt. Hardeep Kaur and Others and the said valuation report was given by them to their banker for obtaining the loan and this is not reliable as per arguments given above and such valuation was not from DVO but from Consultant Engineers and Valuer etc. The valuation report has been made as the basis by the AO for determining the sale price of five SCOs sold during the year and calculated the value of one SCO as sold for Rs. 1.25 crore, thus, the addition of Rs. 4,54,00,000/- was made.

47. The Ld. Counsel of the assessee argued that the basis is the same as per the arguments, while arguing ground No.1 to 3 in department appeal and ground No.1 &2 in assessee's appeal, the same arguments be considered and no enquiries have been made from the buyers of the SCOs. The statement of Sh. Raj Kumar Sachdeva is third-party evidence. The entire purpose of

valuation report was to support the loan transactions by the third party and not by the assessee concerned, In the valuation report, it has clearly been mentioned. The Ld. Counsel relied upon the finding by the CIT(A) and argued that the addition has rightly been deleted by the CIT(A). Further, it was brought to our notice that during post search, summons had been issued to various plot holders, who had purchased the plots from the company and all of them confirmed the rates as per registered value.

48. Ground No. 5 & 6 are common with the ground of Appeal No. 3 (a)(b)(c) in the case of assessee. The facts on this issue have been discussed by the AO at page 58 to 87 of the order of AO. The facts in brief are that the from the premises of Sh. Ajay Prabhakar, one account in the name of Sh. Gurmeet Singh was found. From the digital data of Sh. Ajay Prabhakar, the Account of Sh. Gurmeet Singh was there wherein, it was mentioned as "C/o Ajay Prabhakar", in which, certain cash and cheque amount had been mentioned having been paid to Sh. Gurmeet Singh. It was found by the AO that in this account, there was details of certain payment by cheques, which tally with the payments made by 'Homelife Bujildcon Pvt. Ltd.', which have been dealt in the assessment order. Further, certain cash receipts have been found, where there are signatures of Gurmeet Singh as per digital data, but there are no signatures of any of the director of the company or any of the witnesses. Further, it was found that the assessee company had purchased certain land from 'Sh. Gurmit Singh' and not from 'Gurmeet Singh' and on the basis of said evidences, the AO stated that the exact consideration had

not been stated in the registration deed in respect of land purchased from Sh. Gurmeet Singh by the assessee. The AO on the basis of rate of purchase of land from Sh. Gurmeet Singh issued a show cause notice, dated 21.7.2023 to which, a detailed reply was filed by the assessee which have been placed at page 737 to page 761 of the paper book on various issues and it was stated that the land has been purchased from Sh. Gurmit Singh Bhangu S/o Sh. Baldev Singh and not from Sh. Gurmeet C/o Sh. Ajay Prabhakar.

49. It was argued that it is third party evidence and assessee does not know , who is Gurmeet Singh. The AO may enquire from Sh. Ajay Prabhakar. It was further argued that the assessee had purchased land from Sh. Gurmit Singh Bhangu and produced the copy of the purchase deed. Further, that they have no link or connection with the document recovered from third party. The Counsel also argued that statement of Sh. Gurmit Singh Bhangu by issuing the notice u/s 131 was recorded by the AO, which has been placed at page 862 to 864 of Paper Book, in which, he stated that he inherited the property from his father by will and denied all such digital record, which were recovered from the premises of Sh. Ajay Prabhakar, denying the alleged cash payment made to him. However, the AO found that the total number of parties from whom, the land has been purchased were 19 and on all such purchases which were made by the assessee company, applied a rate of 2.60 crore per acre as per data from Sh. Ajay of Sh. Gurmeet Singh and made an addition of Rs. 71,08,87,130/- .

50. The assessee made detailed submissions before the CIT(A) and challenged the evidence found from the premises of third party i.e. Sh. Ajay Prabhakar, Sh.Ravi Kapoor & Others and also the extrapolation as made by the AO. The Id. Counsel argued that the land had been purchased at different locations and the same have been purchased at prices starting from Rs.1060 per sq. yard to 2400 per sq. yard. Further, the land has been purchased for the purposes of extension and development of assessee colony, the Assessing Officer has just presumed on the basis of evidence found from third party as unaccounted cash having been paid to the seller of the land, Sh. Gurmeet Singh and whereas, the assessee had purchased the land from Sh. Gurmit Singh Bhangu It was further stated that the so called receipts as recovered from the third party do not bear the name or signatures of the assessee's company representative and no corroborative evidence was found from the premises of assessee. Thus, no reliance could be placed on such digital evidence, since no original document have been confronted to the assessee.

51. It was further argued that the Author of the document namely Sh. Ajay Prabhakar could have prepared this document for his own benefit or to lure certain parties to enter into some transaction and, no presumption could be drawn from the contents of the documents, seized, from the third party reflecting any unaccounted transaction viz assessee. It was further stated that even Sh. Gurmit Singh Bhangu in his statement before the AO, categorically denied having received any cash payment from 'Homelife Buildcon Pvt. Ltd.'. He did not accept any such

document, being relied by the AO. He further stated that he does not know any person of 'Homelife Buildcon Pvt. Ltd.', and neither could identify Sh. Ajay Prabhakar. Similarly, it was stated by the Ld. Counsel that there has been denial by the Sh. Jagjit Singh Grewal and Sh. Manu Gupta, directors of the company, having paid any cash in respect of land purchased from one Sh. Gurmit Singh. It was argued that the finding of CIT (A) that since the cheque payment are tallying with the books of accounts of the assessee company, therefore, the cash payments as paid to Sh. Gurmit Singh also belonged to company, is incorrect finding. So called account in the 'digital data' having been found from 'third party' as the assessee has no control over it, neither the signatures of the assessee company are there. The assessee had purchased land from Sh. Gurmit Singh Bhangu. So, addition as sustained by the CIT(A) to the tune of Rs. 2,05,00,000/- as having been paid to Gurmit Singh is not proper. Further, it was argued that even the extrapolation was made on the basis of such document is without any valid consideration. It was pointed out that, though, the CIT (A) has deleted the addition as no incriminating evidence has been found during the course of search regarding any cash payment paid in respect of other purchases of land during the year. So, no extrapolation could be made, but it was also argued that even part addition as sustained by the CIT(A) to the tune of Rs. 2,05,00,000/- is not sustainable, since nothing was recovered from the assessee relating to such issue.

52. In assessee's appeal, there are ground of appeal No. 3 & 4 (a)(b), which are on account of certain evidences found from the

premises of Sh. Ravi Kapoor and from one Sh. Devinder Ghai. The Ld. Counsel argued that this issue has been discussed by the AO. As regards, the addition sustained to the tune of Rs. 1,41,50,000/- from the 'digital data', found from the premises of Sh. Ravi Kapoor, an independent broker, certain data was recovered from email.id belonging to him as 'swastikadp7@gmail.com'. During the course of search at the time of recording of statement of Sh. Ravi Kapoor and, later on, during the course of assessment proceedings, Sh. Ravi Kapoor stated that said data belonged to him only. In his statement recorded during assessment proceedings, he had stated as under as per page 89 of the assessment order.-

"I provide additional services to my customers other than sale purchase of properties, like up gradation of properties/liasing etc. these payments belongs to seller/buyer."

53. Further, on the basis of certain abbreviation, it was presumed by AO that this data belongs to Assessee Company, which was denied by Sh. Ravi Kapoor. It was argued by the Ld. Counsel that though, during search due to some mistaken belief, Sh. Manu Gupta, director of Homelife Buildcon Pvt. Ltd. had stated that certain salary was paid to Sh.Ravi Kapoor, but later on, during assessment proceedings, in the statement of Sh. Manu Gupta recorded on 08.08.2023, he stated that Sh. Ravi Kapoor is employee of 'MJB Data Matrics', a Coffee Shop, being run in the name of 'Brishta' situated in 'Sunview Enclave' (colony of assessee company) and, thus, he had wrongly stated during the course of search under some misconception / coercion/ duress, which was clarified during assessment proceedings. Relying upon

on earlier statement during search, the AO made the addition of Rs. 1,41,50,000/-, for which, neither Ravi Kapoor agreed nor Sh. Manu Gupta agreed and further to that, no corroborative evidence of the same was found from the premises of assessee. On the basis of certain self-assumed abbreviation in his e-mail.id, addition was made by the AO and confirmed by the CIT (A).

54. It was further brought to our notice that this issue has been discussed by the CIT(A) in his order and it has been contended that substantive addition has already been made in the hands of Sh. Ravi Kapoor vide order, dated 31.12.2022 in Asstt. Year 2021-22. The said document has been owned by Sh. Ravi Kapoor and, thus, on one hand, the addition has been made as 'unexplained money' in the hands of Sh. Ravi Kapoor, who has owned the document and merely on the basis of certain presumptions, the same addition has been made in the case of assessee, as well and, thus, it amounts to double addition without any basis. It was further argued that Sh. Ravi Kapoor has been disclosing brokerage income in his returns filed prior to search from real estate and since the data was found from the digital record of Sh. Ravi Kapoor, the presumption u/s 132(4) is that the document belong to Sh. Ravi Kapoor only and no addition could be made in the hands of assessee. The confirmation of this addition in the hands of assessee, is therefore, highly unjustified. The Ld. CIT(A) has ignored that the document has to be read as a whole and without any corroborative evidence found from the premises of assessee, the addition in the hand of assessee is misconceived, being third party evidence as per the case laws cited above.

55. The last ground of appeal in the assessee's case bearing Ground No. 4 (a) (b) is on the basis of document found from Sh. Devinder Ghai as per page 99 to 103 of the order of Assessing Officer. It was stated by the Ld. Counsel that the said document has been reproduced at page 99 of the order and it is an account of Sh. Davinder Ghai in the books of JBK India, where one payment by cheque has been mentioned, besides cash. During the course of assessment proceedings on the basis of certain information in respect of one cheque, the said transactions of Rs.10 lacs, it was found by the AO that the said cheque was debited from the bank account of Sh. Devinder Ghai on 06.11.2020 in favour of 'Homelife Buildcon Pvt. Ltd.', the entire addition of Rs. 33,95,000/- have been made.

56. It was argued that similar addition has been made in the hand of Sh. Devinder Ghai and the said document was recovered from the premises of Sh. Devinder Ghai, as such, no cognizance could be taken of the said document in the hands of assessee. The AO has just presumed without making any enquiry that M/s JBK India as written on the seized document may be the company managed by 'Homelife Buildcon Pvt. Ltd.' on the basis of one entry of Rs. 10 lacs cheque given by Sh. Devinder Ghai and, thus, AO made the addition.

57. It was further pointed out that the Ld. CIT(A) has discussed this issue and it was argued that there is no basis of assumption/presumption that JBK India is the company managed by 'Homelife Buildcon' just on the basis of one cheque entry of Rs. 10 lacs. No enquiry have been made during the course of search

or during the course of assessment proceedings and there is no evidence that the said document is related to Assessee Company. The assessee company has no liability to explain as what kind of data is maintained by third party. Further, the document clearly states the name of Sh. Devinder Ghai, who may have certain transactions with JBK India. How he recorded the entry or how that company JBK India records such entry is none of the concern of the assessee and, thus, there is no basis of making the said addition. Thus, it was prayed that the appeal of the department be dismissed and the appeal of assessee be allowed on merits.

58. The Ld. CIT (DR) relied upon the order of AO in its entirety and also argued that the market price of the land sold by assessee company was much higher and the registration was being effected at the lower rates and relied upon the evidence found from the digital data of Sh. Ravi Kapoor and the statement of Sh. Ajay Prabhakar and Sh. Raj Kumar Sachdeva. He further stated that the valuation made by different valuers cannot be so high and such valuation was made by expert persons and, as such, that evidence could be used for the purposes of making the addition and extrapolating of the same in respect of the entire sales of plot made during the year under consideration. Ld. DR further argued that the CIT(A) has wrongly deleted the addition on account of extrapolation. He justified the addition of Rs. 5,50 crores in respect of plots sold to SurbhiBhanda and Praveen Bhanda as per digital data from the Mobile of Sh. Ravi Kapoor. He also emphasized that the addition by the CIT (A) has wrongly

been restricted in respect of purchase of land from Sh. Gurmit Singh as per evidence found from the digital data of Sh. Ajay Kumar Prabhakar. Since the other land was also in the same vicinity, the CIT (A) has wrongly deleted the other addition. He sought the confirmation of addition as sustained by the CIT(A) on the basis of email.id of Sh. Ravi Kapoor and on account of document found from the premises of Sh. Devinder Ghai.

59. We have considered the arguments on merits of the Ld. Counsel and CIT (DR) and we have also gone through the Brief Synopsis, the paper books in three Volumes, judgment set as filed by the assessee's counsel. We have also gone through the order of AO and CIT(A). The facts are not disputed and as highlighted, while dealing with the legal grounds of appeal of the assessee, that all the additions as made by the AO are on the basis of documents / digital data recovered from the premises of Sh. Ajay Kumar Prabhakar, independent deed writer and his associate Sh. Raj Kumar Sachdeva and Sh. Ravi Kapoor, an independent broker, the document recovered from Sh. Devinder Ghai and on the basis of statements of Sh. Ajay Prabhakar, Raj Kumar Sachdeva. It is also a fact that the above persons are not the employees of the assessee company and they are not even the partners /directors in the company. They are carrying on their independent business. Sh. Ajay Kumar Prabhakar is into the profession of 'deed writer' since 1996. During the year, the assessee had sold 72 plots in his colony and all the registration deeds have been executed as per circle rates. In so far as, the valuation reports as procured by the AO from different persons,

who had bought the plots from the company, such plot holders for the purposes of raising the loan by them from the Financial Institutions, had themselves prepared the valuation reports for construction of houses etc. The valuation reports are from structure designers, Chartered Engineers and not from the DVO as stated by the AO in his order. These valuers are Private persons and their reports have no legal sanctity. The 'Home buyers' are independent persons, not related to Assessee Company or to the directors of company and, as such, such valuation reports as obtained from third parties by the AO during assessment has no link or connection with the assessee. If such parties have submitted inflated valuation reports to the Financial Institution for raising loan, it cannot form the basis for making the addition on account of sales of plot in the hands of the assessee. Further, none of such reports was recovered from the premises of the assessee, except one report of Sh. Harbans Singh Sekhon, as being discussed in later paragraph.

60. We have also gone through the statement of Sh. Jagjit Singh director of company, wherein, he has explained the specified purpose of exchange of land with 'Aayali Kalan Co-operative Agricultural Multiple Society. The transaction for the purposes of exchange of land cannot be taken as base for the rate of plots. Further, that valuation report which has been reproduced in the order of the AO is of a commercial property as mentioned in the said report and the AO has estimated the value on that basis for residential property. So, there is lot of difference between the rate of residential and commercial proper. Further, we find that the CIT (A) has dealt this issue at page 89 in his order as under:-

“vii I have also gone through the above said valuation report reproduced at page 6 to 8 of the assessment order and I find that even otherwise this valuation report is of a commercial property as mentioned in the said report and whereas the estimation has been made by the AO in respect of residential properties. It is a fact that there is a vast difference between the prices of the residential and commercial properties. This fact has been mentioned and admitted by the AO as well in the assessment order. Further, the said Valuer has not given any basis of the value arrived at by him @Rs. 30,000/ per sq. yards. Thus, the said valuation cannot form the basis for adopting the value of Rs. 38,500/- per sq. yards. Thus, I am of a firm opinion that firstly the valuation reports in the names of third parties, as obtained by the Assessing Officer from the different banks have no evidentiary value since they were neither found from the premises of the assessee and not related to the assessee. As regards, the valuation report of Sh. Harbans Singh, the same was for commercial property and no comparable cases have been cited by any of the Chartered Engineer/ Valuers in any of the report and even by Sh. Harbans Singh wherein he has just adopted the valuation on ad-hoc basis for a very specific purpose of exchange of property.

viii) The statement of Sh. Jagjit Singh Grewal, Director of the company recorded on 28.03.2022 is also very much relevant wherein he had explained and detailed the purpose of obtaining the valuation report from Sh. Harbans Singh Sekhon. This is duly supported by the actual transaction of the land executed by the assessee and, thus there is nothing incriminating against the assessee viz a viz the Valuation Report of Sh. Harbans Singh Sekhon.”

We concur with the said findings of the CIT(A) as reproduced above and as such, no adverse view could be drawn on account of such valuation reports as procured by the AO from plot holders or of Sh. Harbans Singh Sekhon.

61. As regards the statements of Sh. Ajay Kumar Prabhakar and Sh. Raj Kumar Sachdeva, they are carrying on independent business of 'deed writing' since 1996 much before the company started its business of real estate in 2007-08. Sh. Ajay Prabhakar had filed an affidavit retracting his earlier statement. No cross

examination has been allowed to the assessee. Reliance by the assessee on the judgment of Punjab & Haryana High Court in the case of DSG Papers (P) Ltd. reported in [2024] 161 taxmann.com 568 and to the Apex Court in the case of CIT Vs Odeon Builders reported in 418 ITR 315, in which, it has been held that no reliance could be placed on the statement recorded at the back of the assessee, without affording any opportunity of cross-examination. Findings of CIT(A) in following paragraphs at page 82 & 83 of his order is reproduced as under: -

ix). Similarly, the AO has referred to the statements of two persons namely Sh. Raj Kumar Sachdeva and Sh. Ajay Kumar Prabhakar. In this regard, it is observed that heavy reliance has been placed by the AO on the statement of these two persons without allowing any cross-examination to the assessee. The AR has submitted that such reliance is misplaced as per the binding judgment of the Hon'ble Apex Court in the case of Kishan Chand Chela Ram reported in 125 ITR 713 and Andaman Timber Industries reported in 281 TIR 214 and other judgments as per the written submissions furnished by the assessee. It has been held in many cases that cross examination is not required in the case of each & every person if the facts are supported by the documents. The AO has mentioned that Sh. Ajay Kumar Prabhakar and Sh. Raj Kumar Sachdeva have been de-facto working for the appellant as they were the deed writers associated with the plots sold by the appellant. The AR has submitted that these are independent persons doing independent activities. Another important aspect of valuing the land by the Assessing Officer on the basis of statements of Sh. Ajay Kumar Prabhakar (independent Stamp Vendor and Deed Writer) and of Sh. Raj Kumar Sachdeva who is a partner in Prabhakar Associates and working with Sh. Ajay Kumar Prabhakar is that both the above persons are independently self-employed are not occupying any post in the assessee company. They are carrying on independent business of Stamp Vendor and working since 1996 much prior to the coming in existence of the assessee which company was formed in 15th June, 2005 and such persons are engaged in the profession and rendering their professional services to the private parties and they are not the officials of the assessee company.

x). *Reliance by the assessee on the different case laws regarding the evidentiary value of the statement as recorded during search is further supported by the latest judgment of the Chandigarh Bench of the ITAT in the case of Jagbir Singh Nehra in ITA No. 687/CHD/2023 vide order dated 11.06.2024 and thus, looking into these facts & circumstances, merely on the basis of the statement without any documentary evidence, the estimation of rate of Rs. 38,500/- per sq. yards as applied by the AO does not seem to be in order. I agree with the contentions of the assessee that mere statement, that too of a third party, without any other corroborative evidence, cannot have much of evidentiary value."*

62. Further, we have also gone through the judgements relied upon by the assessee of the jurisdictional Bench in the case of 'Sh. Jagbir Singh Nehra' and of 'Gurdip Cycle Industries' as cited 'supra' and of the Hon'ble Supreme Court in the case of 'Mantri Share Brokers Pvt. Ltd.'. Thus, merely on the basis of statement recorded during search and without any documentary evidence or any corroborating evidence found from the premises of assessee during the course of search, no addition could be made in the hands of assessee. We have also considered one unsigned agreement found from the 'Pen Drive' of Sh. Ajay Prabhakar between, Smt. Asha Garg and Smt. Minni Bhandra and for, we are in agreement with the finding of CIT(A) as per the following paragraph at page 83 & 84 of his order:-

xi). *As regard the one unsigned agreement found from the pen-drive of Sh. Ajay Kumar Prabhakar between Smt. Asha Garg and Smt. Mini Jain in respect of one plot at Sunview Enclave, it is observed that this agreement has no link or connection with the assessee company. Further, it is not signed by either of the parties. The statement of Smt. Asha Garg and Smt. Mini Jain were recorded by the AO during assessment proceedings wherein they had denied having entered into any agreement. Thus, under such circumstances, this cannot form as a basis for estimating the sale value of residential plots by the assessee at Rs.38,500/- per sq. yards in the colony.2*

xii. Further, the assessee as per the company record had sold Plot No. 51 to Smt. Mini Jain on 06.06.2018 and that copy of the sale deed has been furnished at page 508 to 511 of the paper book and thus, this shows that the assessee had no link with the said plot during the year under assessment. This agreement relied upon by the AO does not have evidentiary value in the case of the appellant as it is between two independent parties, executed only after one of the party, has already purchased it from the appellant. Thus, the terms & conditions of the agreement of this party cannot be said to have binding effect on the appellant, as the appellant is neither in the picture nor have any say in this transaction.

63. Further, we find that the reliance by the CIT(A) on the judgment of Punjab & Haryana High Court in the case of Sh. C.S. Atwal reported in [2015] 59 taxman.com 359, judgement of Apex Court in the case of 'Nishant Construction Pvt. Ltd'., reported in 101 taxmann.com 180 and of the Delhi High Court in the case of CIT Vs Sant Lal, reported in 118 taxmann.com 432 are quite relevant to the issue. Besides, the judgment of Apex Court in the case of K.P. Varghese, as cited supra. We also find that the rates of plot in the colony, are dependent on a number of factors like, location, East Phase, Road side view and many other considerations and it is a fact that no evidence of 'on money' have been found during the course of search. Over and above the registered consideration and, as such, the extrapolation as made by the AO has rightly been deleted by the CIT(A) in respect of 70 plots, following binding judgement of Punjab & Haryana High Court in the case of V.M. Spinning Mill Vs CIT, reported in 16 taxmann.com 199 and the relevant part of the judgment is being reproduced as below:-

"The Ld. Tribunal in further appeal by the Revenue as well as by the Assessee rejected the contention of the assessee in respect of addition of sales through 17 sale bills amounting to Rs. 1,11,99,427/- and affirm the finding that such sales were made

outside the books of accounts. However, it held that there is no justification to infer that the assessee would have undertaken sales outside the books of accounts during this rest of financial year also, therefore, the assessment of unrecorded sales were limited to Rs. 1,11,99,427/- representing 17 unrecorded sale bills alone. The Tribunal partly granted relief, when it made addition of Rs. 20 lacs on account of unexplained investment made towards the working capital as against Rs.71,07,100/- added by the Assessing Officer and upheld by the Commissioner of Income Tax. The same view has upheld by the High Court."

64. As regards the sustaining of addition of Rs. 5,50 crores, in respect of purchase of plot by Smt. Parveen Bhandra and Smt. Surbha Bhandra as per para (xxx) of the order of CIT(A), We find that Sh. Ravi Kapoor has owned that data from his mobile as belonging to him during search and later on, no enquiries have been made from purchaser of the plot. Sh. Manu Gupta, director has also denied his signatures on the digital data of third party and nothing has been found from assessee company during search. The original slip has not been produced nor any hand writing expert report is there. The said addition as sustained by the CIT(A) is not justified at all.

65. We also find that it is an accepted fact that no incriminating material was found from the premises of the assessee and the said addition was sustained by the CIT(A) on the basis of 'digital data' found from Sh. Ravi Kapoor, who is not an employee of assessee company. He is a property dealer (broker) and he has been disclosing income from his property dealings in his returns of income in Asstt. Year 2020-21 and in the return filed for Asstt. Year 2021-22. He had disclosed an income of Rs. 44 lacs and which has been accepted by AO and even for Asstt. Year 2022-23, he has

disclosed an income of Rs. 60 lacs and all such income has been accepted by the department. Copies of such evidence has been placed in the Paper Book. We also find that Sh. Ravi Kapoor has accepted that the said 'digital data' belongs to him only in respect of his property business and even he has denied about any signatures of Sh. Manu Gupta as per 'digital data'. Sh. Manu Gupta has also denied his signatures on the same. Further, there is nothing on record about the enquiries or statements of Smt. Praveen Bhandra and Surbhi Bhandra and no adverse view have been taken in their cases. Since these evidences having been recovered from the third party, namely Sh. Ravi Kapoor and no satisfaction have also been recorded by the AO before relying upon such material in the case of assessee on which assessment has been framed u/s 143(3). Even the section 132(4) clearly states that the document has to be considered in the hands of person, from whom, such document has been found. No corroborative evidence has been found from the assessee. Various judgments as relied upon by the Ld. Counsel as cited 'supra' of the Odeon Builders, Sh. Amarjit Singh, DSG Papers (P) Ltd. and different Benches of the ITAT are very much relevant, besides the judgment of Sh. Ashwani Kumar Jain, as cited 'supra'.

66. Reference maybe made in this context to the judgment of Hon'ble Supreme Court in the case of CBI Vs V.C, Shukla & Others (1998) 3 SCC 410, wherein, the Supreme Court considered as to whether the contents of the diary impounded from third party could lead to prove charge against the accused under the prevention of Corruption Act (1998). It was held that as per

section 132(4), a person from whom possession, such documents are found, the contents of such documents have to be considered to be belonging to him only. Further neither, Sh. Ravi Kapoor nor Ajay Prabhakar or Devinder Ghai have alleged that documents from them belong to 'Homelife Buildcon Pvt.Ltd., and, thus, under such circumstances, the said documents as recovered from Sh. Ravi Kapoor & others can not be used against the assessee company. Further, no enquiries have been made from Praveen Banda and Surbhi Banda. Therefore, in the light of above said facts, the sustaining of addition of Rs. 5.55 crore as confirmed by the CIT (A) in para {xx} is deleted and the assessee succeeds on this issue. Also, as per finding given by us on legal ground of appeal, no satisfaction having been drawn by AO, the whole basis of making addition is not justified.

67. As regards, the deletion of addition of Rs.4,54,00,000/-, the same has been deleted by the CIT(A) as per ground of appeal 4 in department appeal, we have considered the finding of CIT(A) on this issue from page 94 to 97 of his order and the facts are the same in, as much as, on the basis of valuation report submitted by purchaser of SCO to the bankers. The rate of sale of SCO have been adopted for the year under consideration at enhanced value. These facts are identical to our findings with regard to deletion of addition, while dealing with the Ground No. 1 to 3 of the department appeal and ground No. 1 of the assessee's appeal. We have held that no such basis can be adopted on such valuation reports and neither any extrapolation can be made. Thus, this ground of appeal in the department appeal is

dismissed as per our finding given above while deciding ground No. 1 to 3 of the department appeal.

68. As regards ground No.5 & 6, which corresponds to the ground No. 3 (a) (b) (c) of the assessee's appeal, we have considered the arguments of both parties and the order of authorities below and find that the addition has solely been based on the basis of 'digital data' found from the search carried out on Sh. Ajay Prabhakar, a deed writer. No corroborated or linking evidence has been found from the assessee company or from the premises of directors Sh. Jagjeet Singh Grewal or Sh. Manu Gupta.

69. We also find that no opportunity of cross examination have been afforded to the assessee on the basis of such digital data recovered from Sh. Ajay Prabhakar. Merely on the basis of some entries of payment through banking channels being made to Sh. Gurmit Singh by the assessee company on certain dates, the addition u/s 69 have been made in the hands of assessee company and it has been sustained by the CIT(A) to the extent of on money allegedly being paid to one Sh. Gurmit Singh, from whom, the land had been purchased. No corroborating or any other evidence has been found from the premises of assessee. Even Sh. Gurmit Singh had appeared before the AO and copy of his statement has been filed before us. He has completely denied any dealings with Sh. Ajay Prabhakar. He has not agreed to the cash payment or other evidences, which have been reproduced at various pages in the assessment order as having been found from the premises of Sh. Ajay Prabhakar in digital mode. The CIT(A) has rightly held that the author of the document could have

prepared these papers for his own benefit or to lure certain parties to enter into certain transactions, in such seized papers from the third party, on which there is no name of the company or its representative, no presumption that the contents of the documents reflect any unaccounted transactions entered by the assessee company can be drawn. Further, in the digital data, found from the third party, the name is mentioned as Gurmeet Singh and not Gurmit Singh, from whom the land has been purchased. Even Sh. Gurmit Singh has stated before the AO that he does not know the directors of assessee company. Even, Sh. Jagjit Singh Grewal and Sh. Manu Gupta have denied any cash amount being paid to Sh. Gurmit Singh as per noting seized from Sh. Ajay Prabhakar. Though, the CIT(A) has deleted the extrapolation in respect of land purchased during the year on the basis of above evidence, but he has sustained the addition of Rs. 2.05 crore on the basis of digital data in the hands of assessee. As submitted above, that no addition could be made on the basis of third party document specially when, no satisfaction has been drawn by the Assessing Officer while framing the assessment of the assessee company, as per case laws as cited above, no addition could be made on the basis of third party evidence, without any corroborated evidence found from the assessee company.

70. Further, there being no satisfaction being framed by the AO on this issue, no cognizance could be taken of such document recovered from third party. Further any conclusion drawn on the basis of discovery of evidence and the statement recorded u/s 132(4) is confined to the person from whose possession such document is found and such document cannot bind the third

person as in the present case. It is a fact that no cross examination was allowed of Sh. Ajay Prabhakar, from whose premises such documents were recovered. The assessee is not expected to know why that person has made such entries of third person. The reliance by the assessee on the judgment of Sh. V.C. Shukla case of the Hon'ble Apex Court is quite apt to the above issue. Besides that no cross examination has been allowed of Sh. Ajay Prabhakar and further Sh. Gurmit Singh have also not agreed to any 'on money' having been received by him, thus, on the basis of finding given by the AO and the CIT(A) and the evidence possessed by revenue has hardly any worth of credence and on that basis, no addition can be made in the hands of assessee both on legal and on facts of the case, thus, the ground of appeal as taken by the department by way of Ground No. 5 & 6 are dismissed and while ground as raised by the assessee bearing 3 (a),(b) & (c) are allowed as per above.

71. The last ground of appeal No. 3, 4 (a) (b) are again on the fact that recovery of certain documents found from Sh. Ravi Kapoor and Sh. Devinder Ghai. There is no linking of the evidence found from the premises of Sh. Ravi Kapoor and Sh. Devinder Ghai with the business of the assessee. Even, Sh. Ravi Kapoor and Sh. Devinder Ghai have, nowhere, stated that the contents of the documents as mentioned in the seized belong to the assessee company. The seized data from the residence of Sh. Ravi Kapoor was found from his 'email.id' should belong to Sh. Ravi Kapoor only and merely on the basis of certain abbreviation, the authorities below have presumed that such contents of documents belong to assessee, addition has not only been made

in the hands of assessee company, but similar addition has been made in the hands of Sh. Ravi Kapoor also of the same amount in his assessment for Asstt. Year 2021-22 by the same AO. The AO has also mentioned in his order that similar addition has been made in the case of Sh. Ravi Kapoor at page 111 of his order. This amounts to double addition.

72. We have already elaborated above the provisions of section 132(4) and the evidence found from third party on the basis, of which, no adverse view can be drawn in the hands of the assessee. Further, neither Sh. Ravi Kapoor nor Sh. Davinder Ghai had stated that the said documents belong to assessee company and the judgment of ITAT in the case of Sh. Amarjit Singh in ITA No. 774/Chd/2023 is applicable to the facts and circumstances of the case. Further Sh. Ravi Kapoor in his statement categorically owned such document belonging to him while dealing with legal ground it has been held that no satisfaction had been drawn by the AO, with regard to documents recovered from third party. No satisfaction had also been drawn by AO before confronting such documents as held above, the addition as sustained by the CIT(A) at Rs. 1,41,50,000/- is hereby deleted both on legal and on merits. The provisions of section 115BBE are not applicable as such either.

73. With regard to addition of Rs. 33,95,000/-, the presumption has been drawn by the AO and CIT(A) that 'M/s JKB India', where name has been mentioned on one piece of paper seized from Sh. Devinder Ghai, where the name of 'Sh. Devinder Ghai' is there. The finding by AO/CIT(A) that JKB is group company of 'Homelife

Buildcon Pvt. Ltd.' is misplaced and this finding is based only on presumption/assumption. Further, the document has to be read as a whole. It is also settled law that the assessee has no idea as to what kind of record, the third party is maintaining and in what manner. Moreover, no direct/indirect link has been established by the AO/CIT(A) that such document belong to assessee company. The same addition was made in the hands of Sh. Devinder Ghai u/s 68. Thus, wrong conclusion has been drawn in the case of assessee on the basis of such document. The finding of CIT(A) about the confirmation of addition is again on presumption and assumption and we have no hesitation in deleting said addition as sustained by CIT(A).

74. The ground of appeal about the mechanical approval as granted by the Ld. Addl. CIT U/s 153D in this context, we have already given the proper relief to the assessee on the legal ground that in the absence of compliance with the provisions of section 148B, the assessment is quashed and, thus, this ground of appeal becomes academic in nature.

75. In the result, Revenue appeal is dismissed and appeal filed by the assessee is allowed.

Order pronounced in the open Court on 17.07.2025.

Sd/-

राजपाल यादव
(RAJPAL YADAV)

उपाध्यक्ष/VICE PRESIDENT

Sd/-

कृणवन्त सहाय
(KRINWANT SAHAY)

लेखा सदस्य/ ACCOUNTANT MEMBER

AG /RKK

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्था/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar